

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BERTHA PAYNE,

Plaintiff,

MEMORANDUM AND ORDER
19-CV-0843 (FB) (ST)

-against-

41 GROCERY DELI & GRILL CORP.,

Defendant.

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BLOCK, Senior District Judge:

Magistrate Judge Tiscione issued a Report and Recommendation (“R&R”) recommending this action be dismissed for failure to prosecute. ECF No. 7. The R&R advised that objections were due within fourteen days and warned that “[f]ailure to file timely objections shall constitute a waiver of those objections . . . on later appeal.” R&R at 6. The R&R was filed and served simultaneously on December 2, 2019. To date, no objections have been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without de novo review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The

Court will, however, excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Court adopts it without de novo review and dismisses this action with prejudice for failure to prosecute.¹

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
July 22, 2020

¹ Simultaneous with the R&R the Court ordered Plaintiff “to immediately forward a copy of [the] R&R to the Defendant and file proof of service with this Court.” To date, Plaintiff has not filed proof of service with the Court. “It is not an efficient use of the Court’s or defendant[’s] resources to permit this case to languish on the docket in the hope that plaintiff will reappear in the future.” *Caussade v. United States*, 93 F.R.D. 625, 629 (S.D.N.Y. 2013) (citing *Davison v. Grillo*, 2006 WL 2228999 (E.D.N.Y. Aug. 3, 2006)). Because Plaintiff has made no effort to prosecute this action, “it would be unfair to the numerous other litigants who await the attention of this Court to permit her suit to remain on the docket.” *Id.*